

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

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|-----------------------------------|---|-----------------------|
| IN RE: |) | CHAPTER 13 |
| |) | |
| ALBIRDIA D. BROWN, DEBTOR |) | CASE NO. 17-12178-JDW |
| |) | |
| |) | |
| |) | |
| |) | |
| THE BANK OF NEW YORK MELLON |) | MOVANT |
| TRUST COMPANY, N.A., AS SUCCESSOR |) | |
| TO BNY MIDWEST TRUST COMPANY, |) | |
| BNY MIDWEST TRUST COMPANY, AS |) | |
| SUCCESSOR HARRIS TRUST AND |) | |
| SAVINGS BANK, AS TRUSTEE, OF |) | |
| BOMBARDIER CAPITAL MORTGAGE |) | |
| SECURITIZATION CORPORATION, |) | |
| SENIOR/SUBORDINATED |) | |
| PASS-THROUGH CERTIFICATES, SERIES |) | |
| 1999-B |) | |
| VS. |) | |
| |) | |
| ALBIRDIA D. BROWN, DEBTOR |) | RESPONDENTS |
| WENDALL W BROWN, CO-DEBTOR |) | |
| |) | |

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
AND THE CO-DEBTOR STAY AND TO ABANDON PROPERTY**

COMES NOW Movant, The Bank of New York Mellon Trust Company, N.A., as successor to BNY Midwest Trust Company, BNY Midwest Trust Company, as successor Harris Trust and Savings Bank, as Trustee, of Bombardier Capital Mortgage Securitization Corporation, Senior/Subordinated Pass-Through Certificates, Series 1999-B, by counsel, and shows this Court the following:

1. This is a Motion under Section 362(d) of the Bankruptcy Code for relief from the automatic stay and under Section 1301(c) of the Bankruptcy Code for relief from the Co-Debtor stay for all purposes allowed by law and the contract between the parties, including, but not limited to, the right to foreclose on certain real property.

2. Movant is the servicer of a loan secured by certain real property in which Debtor and Co-Debtor have an interest. Said real property is security for a promissory note, and is

commonly known as ***Rt 2 Lamar Road, Ashland, Mississippi 38603***, as well as a ***1998 Cavalier 28x56 mobile home*** having serial number ***ALCA1297556S41374AB*** (the “Real Property”). A true, correct and redacted copy of the Promissory Note and Security Agreement is attached hereto as ***Exhibit A*** and it is incorporated herein by reference.

3. Documentation provided is in support of right to seek a lift of stay and foreclose if necessary.

4. Debtor is in default of the monthly installments pursuant to the Promissory Note and Security Agreement. As of December 17, 2018, Debtor is delinquent for three (3) payments of \$715.62 and one (1) payment of \$1,112.23 each.

5. As of December 17, 2018, the unpaid principal balance is \$64,407.94, and interest is due thereon in accordance with the Note. The current amount of unpaid interest on Movant’s loan as of December 17, 2018 is \$1,691.26.

6. Because of Debtor's default of the Property, Movant is not adequately protected and shows that there is cause for relief from the automatic stay. Movant’s interest would also be irreparably harmed by the continuation of the Co-Debtor stay.

7. Upon information and belief, since the filing of the petition herein, the Debtor has remained in possession of and continues to use the Real Property. If Movant is not permitted to exercise its right to foreclose upon its security, it will suffer irreparable injury, loss and damage.

8. Cause exists to lift the automatic stay for, among other things, Debtor's failure to provide Movant with adequate protection in the form of its post-petition mortgage payments in the manner, time and form they have promised to make.

9. Movant requests it be permitted to contact the Debtor via telephone or written correspondence regarding potential loss mitigation options pursuant to applicable non-bankruptcy law, including loan modifications, deeds in lieu of foreclosure, short sales and/or any other potential loan workouts or loss mitigation agreements.

WHEREFORE, Movant prays as follows:

(1) for an Order modifying the automatic stay, authorizing Movant, its successors and assigns, to proceed with the exercise of its private power of sale and to foreclose under its Financing Statement and appropriate state statutes;

(2) Because the Promissory Note and Security Agreement so provides, Debtor and Co-Debtor are responsible for Movant's reasonable attorney's fees;

(3) that Movant, at its option, be permitted to contact the Debtor and Co-Debtor via telephone or written correspondence regarding potential loss mitigation options pursuant to applicable non-bankruptcy law, including loan modifications, deeds in lieu of foreclosure, short sales and/or any other potential loan workouts or loss mitigation agreements;

(4) for waiver of Bankruptcy Rule 4001 (a)(3); and

(5) for such other and further relief, both general and specific, as is just and equitable.

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Respectfully submitted, this the _____ day of _____, 2019.

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., AS SUCCESSOR TO BNY
MIDWEST TRUST COMPANY, BNY MIDWEST
TRUST COMPANY, AS SUCCESSOR HARRIS TRUST
AND SAVINGS BANK, AS TRUSTEE, OF
BOMBARDIER CAPITAL MORTGAGE
SECURITIZATION CORPORATION,
SENIOR/SUBORDINATED PASS-THROUGH
CERTIFICATES, SERIES 1999-B**

BY: /s/Karen A. Maxcy

Karen A. Maxcy
Mississippi Bar No. 8869
McCalla Raymer Leibert Pierce, LLC
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Direct Phone 678-321-6965
Email: Karen.Maxcy@mccalla.com
Attorney for Movant

CERTIFICATE OF SERVICE

I, Karen A. Maxcy, of McCalla Raymer Leibert Pierce, LLC, do hereby certify that on this date, I served a copy of MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND THE CO-DEBTOR STAY AND TO ABANDON PROPERTY filed in this bankruptcy matter on the following parties at the addresses shown, through the Court's ECF/CMF system, and/or via U.S. Mail First Class, postage prepaid and properly addressed, to-wit:

Debtor

Albirdia D. Brown
293 Cherry Brown Lane
Ashland, MS 38603

Co-Debtor

Wendell W Brown
293 Cherry Brown Lane
Ashland, MS 38603

Co-Debtor

Wendell W Brown
2199 Lamar Rd.
Ashland, MS 38603

Debtor's Attorney

Heidi Schneller Milam
P.O. Box 1169
Southaven, MS 38671

(via ECF/CMF Electronic Notice)

Chapter 13 Trustee

Locke D. Barkley
6360 I-55 North
Suite 140
Jackson, MS 39211

(via ECF/CMF Electronic Notice)

U.S. Trustee

United States Trustee
501 East Court Street
Suite 6-430
Jackson, MS 39201

(via ECF/CMF Electronic Notice)

CERTIFIED, this the _____ day of _____, 2019.

/s/Karen A. Maxcy

Karen A. Maxcy